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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.42/2012
With MA No.41/2012

Jodhpur, this the 23rd day of September, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

1. Oma Ram Suthar s/o Shri Kana Ram, aged about 29 years, resident of Qtr. No.P-46/2, Arjun Enclave, Air Force, Jodhpur, at present employed on the post of Cook (put on Carpenter job in Station Workshop) in No. 32 Wing AF c/o 56 APO.
2. Tara Chand s/o Shri Madan Lal, aged about 33 years, resident of T/1144/1, Lalit Enclave, Air Force Station, Jodhpur at present employed on the post of Cook in the office of Station Catering Flight, AF Station, Jodhpur.

.....Applicants

Mr.J.K.Mishra, counsel for applicant

Vs.

1. Union of India through the Secretary to Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Air Officer Commanding, No. 32, Wing Air force C/o 56 APO PIN-936832.
3. Chief Administrative Officer No.32 Wing Air Force C/o 56 APO PIN-936832.

...Respondents

Ms. K.Parveen, counsel for respondents

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The applicants by way of this OA have challenged the impugned order dated 22.11.2011 (Ann.A/1) and order dated

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7.12.2011 (Ann.A/2) by which they have been excluded for being eligible for Industrial posts (Group-C) and sought the following reliefs:-

- (i) That the applicants may be permitted to pursue this joint application on behalf of two applicants under Rule 4(5) of CAT Procedure Rules, 1987.
- (ii) That impugned order dated 22.11.2011 (Annexure A-1) and order dated 7.12.2011 (Annexure A/2) to the extent it excludes the group C staff in the grade pay of Rs. 1900, may be declared illegal and the same may be quashed. The respondents may be directed to treat the applicants as eligible for undertaking selection/test for the posts notified vide impugned order Annexure A/2 and they may be allowed all consequential benefits.
- (iii) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.

2. So far as relief No. (i) is concerned, since the cause of action has arisen from same/identical orders, therefore, the applicants are allowed to pursue this application jointly.

3. Brief facts of the case, as averred by the applicants in the OA, are that applicant No.1 was initially appointed as Cook in the pay scale of Rs. 3050-4590 in August, 2003. He has passed 12th Class and competency certificate in Carpenter Trade organized in ITI Jodhpur and was also put to work as Carpenter. Applicant No.2 was initially appointed as Cook on 18.2.2002. He is having qualification of B.A. and also passed competency certificate examination in Painter Trade organized in ITI-Jodhpur. A notification was issued for filling up the post of Carpenter and other skilled posts during the year 2008. Both the applicants applied for the same but subsequently, the notification

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was cancelled and the posts remained vacant. Thereafter the posts were again advertised but with certain changes, inasmuch as, the Skilled Artisan posts were sought to be filled in by the serving civilians holding the post of Group-D only and that too without adhering the requisite qualification and even the matriculate qualification was being dispensed with vide SRO Entry SL.No.8 page No. 8 dated 22.1.2009. The group C staff was put out of zone of consideration. The Board of Officer could recommend a person as qualified even though one does not possess any of the requisite qualification meant for recruitment of Skilled Artisan category, if it certified one to be suitable for the post. The applicant No.1 served a notice for demand of justice on the respondents raising his grievance, which has been turned down vide impugned letter dated 22.11.2011. It is averred in the application that revised rules of recruitment of Skilled posts are under submission for approval of competent authority. The post of Cook, which was accepted as feeder post earlier, is put out of zone being in the same grade pay. It is further averred that the applicants were eligible on the date when the vacancies were first notified and subsequently they cannot be made ineligible due to revised rules of recruitment which are still under submission for approval of the competent authority. The applicants have neither been called nor would be called since they are not holding the erstwhile Group-D post and no written order is going to be issued on their application. The candidature has been rejected vide impugned order Ann.A/1 which deserve to be quashed being violative of Article 14 and 16 of the Constitution of India. Therefore, being aggrieved by the action of the

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respondents, the applicants have filed this OA praying for the aforesaid reliefs.

4. The respondents by way of filing reply have denied the right of the applicants and submitted that in the year 2008 a notification for filling up of Industrial posts amongst Group-C and D employees was issued in which the applicants also applied. However, on receipt of certain clarifications from the Government of India, the said notification was cancelled and all the persons who applied in pursuance of the notification were informed accordingly. As per letter dated 29.6.2007 recruitment for various technical trades was to be done by promotion, failing which by absorption and failing both by deputation/re-employment and failing all by direct recruitment, therefore, as per instructions of Govt. of India, the above mentioned criteria has to be followed by the department in order to fill various technical posts. Accordingly, notification mentioning selection by promotion was issued and applications were sought from Group-D civilians only. Meanwhile, applicant No.1 forwarded a legal notice which was forwarded to the competent authority and after having considered the relevant aspects of the legal notice, the Air.HQ vide letter dated 23.8.2011 clarified that the vacant Industrial posts may be filled by erstwhile Group-D employees who have at least five years of service in the unit/establishment and have either acquired ITI certificate in the appropriate /akin trade/field or passed the requisite trade test and desirably passed 10th standard.

It has been further stated that the post of Cook carries the Grade pay of Rs. 1900 which is same as of Skilled Posts and classified

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as Group-C post. Therefore, Cooks may not be considered for promotion to the post which carries the equal grade pay irrespective of the fact that the candidate has the requisite qualification to make him eligible for consideration for promotion. Accordingly, the respondents have initiated recruitment process amongst erstwhile Group-D employees after furnishing a suitable reply to the applicant No.1 as per provisions of law.

5. Heard both the parties. Counsel for the applicants contended that earlier the vacancies were notified vide notification issued in the year 2008 and the applicants were called to appear in the written test but subsequently the said notification was cancelled and these vacancies were re-advertised. When the applicants were not allowed to appear in the written examination then the applicants approached this Tribunal and vide interim order dated 9.2.2012 passed by this Tribunal, the applicants were allowed to appear provisionally and their result was directed to be kept in the sealed cover and to be opened only if and when they succeed in the result of this OA and they are declared to be eligible for appearing at the said test.

6. Per contra, counsel for the respondents contended that the applicants were earlier allowed while they were holding the Group-C post, which notification was cancelled, but they were not entitled to appear in the written test being in the same scale. After suitable modification, another notification was issued with regard to Group-C posts and since the applicants were already working in Group-C

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posts, the Air HQ vide letter dated 23.8.2011 clarified that the vacant Industrial Posts may be filled by erstwhile Group-D employees who have at least five years of service in the unit/establishment and having either acquired ITI Certificate in the appropriate akin/akin trade/field or passed the requisite trade test and desirability passed 10th standard. The post of Cook carries Grade Pay of Rs. 1900 which is same as the grade pay of Skilled Posts. Therefore, Cooks have not been considered for promotion to the posts which carries the equal grade pay irrespective of the fact that the candidate has the requisite qualification to make him eligible for consideration for promotion. Therefore, the recruitment process was initiated amongst erstwhile Group-D employees. It is further contended that as per Air HQ letter dated 29.6.2007, recruitment for various technical trades is to be done by promotion, failing which by absorption and failing both by deputation/re-employment and failing all by direct recruitment. Therefore, as per instructions of Govt. of India above mentioned criteria has to be followed by the respondents in order to fill up various technical trades and when the promotion was to be made from Group-D employees, the applicants being holder of Group-C posts, they were not allowed to appear in the examination.

7. Considered rival contention of both the parties and perused the documents available on record. In our considered view, when the applicants were already holding Group-C posts i.e. Cook, they were not allowed to appear in the examination held for Group-C posts as per Air HQ letter dated 23.8.2011, and, therefore, we see no reason to interfere with the order of the competent authority in disallowing the

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applicants on the ground that the applicants were already working in Group-C posts. Accordingly, the OA lacks in merit and the same is dismissed with no order as to costs.

8. Since the OA has been dismissed, therefore, MA No.41/2012 for correction in interim stay order dated 9.2.2012 has become infructuous and the same is also dismissed as having become infructuous.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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